IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLN.NO.1177 OF 2007

1. Kisan Kanhu Landge
2. Sunanda Kisan Landge
3. Bababhai Vishvanath Surve
4. Dattatraya Sopan Kudale
5. Tatyaba Bhikaji Gole
6. Shivaji Chapaji Gole
All are r/o Ganesh Nagar
at Post Pirnagut, Tal.Mulshi
Dist.Pune ..Applicants

Vs.

State of Maharashtra ..Respondents

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Ms.Rupali Deo i/b Subhash Hulyalkar
Advocate for Applicants
Mr.Rajesh More A.P.P. for the State

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : APRIL 17, 2007

P.C.

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State.

2. The applicants are seeking anticipatory bail in C.R.No.26 of 2007 of Paud Police Station. The said case is under Section 3(1)(x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act (hereinafter referred to as "Atrocity Act") and

under Sections 323, 506 of IPC and 7(1)(iii) of the Protection of Civil Rights Act.

3. It is the case of the complainant that while she was going to throw garbage, the applicant no.1 came there and abused her on her caste and told her that she should not throw garbage there. He also assaulted the complainant. Applicant no.2 is the wife of applicant no.1. The complainant has further stated that applicant nos.2, 5 and 6 have also abused her and assaulted her and her husband. As far as applicant nos.3 and 4 are concerned, it is the prosecution case that complainant has stated that applicant nos.1, 5 and 6 were accompanied by some unknown persons and applicant nos.3 and 4 are the said persons. There are no injury certificates to show that the complainant or any person had sustained any injury in the said incident.

4. In the present case, it is seen that FIR is lodged one month after the incident. On perusal of the FIR, it is noticed that it does not contain any averment that the complainant belongs to a particular Scheduled Caste or Scheduled Tribe or that the accused does not belong to any Scheduled

Caste and Scheduled Tribe. A Division Bench of this Court (V.K.Barde & A.P.Deshpande, JJ.) in the case of **Anant Vasantlal Sambre Vs. State of Maharashtra,** delivered a judgment on 20.4.2001 in Cri.Writ Petition No.49 of 2001, in which the view was taken that if the First Information Report does not contain an averment that the accused does not belong to a Scheduled Caste or Scheduled Tribe, the offence under Section 3 of the Atrocity Act cannot be registered. So also in the decision of this Court in the case of **Bai @ Laxmibai w/o Nivrutti Poul and Ors. Vs. The State of Maharashtra; 2001 ALL MR (Cri.)219,** it is observed that if the FIR does not disclose the caste of the complainant, in absence of mention of caste, the police cannot initiate investigation on the basis of FIR. In view of the facts as disclosed in the FIR and in view of the above mentioned decisions, I am of the opinion that this is a fit case for grant of anticipatory bail.

5. In the event of arrest, each of the applicants to be released on bail of Rs.20,000/- (Rs. twenty thousand only) with one or two sureties to make up the said amount in C.R.No.26 of 2007 of Paud Police

Station. The applicants shall report to the concerned police station for a period of three days from 18.4.2007 from 11 a.m. to 2.00 p.m. and thereafter as and when required till the conclusion of trial.

6. Application is disposed of.

[Smt. V.K.Tahilramani, J.]